STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

August 26, 2003

TO: ALL PARTIES OF RECORD IN RULEMAKING 01-08-028

Decision 03-08-067 is being mailed without the Concurrence of Commissioner Kennedy, and without the dissent of Commissioner Lynch.

Sincerely,

Angela K. Minkin, Chief
Administrative Law Judge

ANG:bb1

Attachment

MAILED 8/26/2003

COM/SK1/bb1

Decision 03-08-067 August 21, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration, and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

INTERIM OPINION
SOLICITING 2004-2005 ENERGY EFFICIENCY PROGRAM PROPOSALS AND ADDRESSING SCOPE OF PROCEEDING

154665

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INTERIM OPINION SOLICITING 2004-2005 ENERGY EFFICIENCY PROGRAM PROPOSALS AND ADDRESSING SCOPE OF PROCEEDING

I. Summary

This order solicits Energy Efficiency (EE) program proposals from utilities and non-utility parties for 2004 and 2005. For that solicitation, this order adopts program evaluation criteria, sets the funding cycle for a two-year period, and addresses how funds may be allocated among different types of entities and between program types. In addition, the order describes the process by which the Commission will review and select EE program proposals for funding.

In summary, this order changes existing policy and practice or articulates the continuation of existing policy and practice, as follows:

- We will consider using our funding levels of 70% of PGC funding allocated to statewide utility programs, 10% to statewide marketing and outreach and evaluation, measurement and verification and 20% allocated to other non-utility programs, with some flexibility depending on program proposals.
- The Commission has established policies and procedures by which any party may apply to become administrators of cost-effective EE and conservation programs that meet the qualifications described in the most recent version of the Policy Manual, funded by public goods charge (PGC) revenues for a two year cycle, 2004-05. Program

funding must be approved by a subsequent Commission order;[1]

- The Commission will award funding to entities and programs that are most likely to fulfill public policy goals and program evaluation criteria;
- Utilities may submit proposals that would extend their current program offerings for two years. These programs will be required to satisfy public policy objectives set by the Commission for evaluating EE programs. As the utility programs will be evaluated alongside non-utility proposals, the utilities will be required to submit the same types of documents and follow the same instructions required of other proposing entities. Extensions to existing utility programs as well as new programs must be approved by Commission order;
- Non-utilities implementing existing programs may request an extension through June 2004, with justification showing program success, in order to complete their programs with existing funding, which requests the Executive Director may approve or deny;
- Program selection criteria for 2004-05 include cost-effectiveness, long-term annual energy savings, equity, ability to overcome market barriers, ability to reduce peak demand, innovation, coordination with other programs, and demonstrated success implementing EE programs.

This order finds that Assembly Bill (AB) 117 provides guidance to the Commission to develop the necessary policies and procedures for administering the PGC energy efficiency programs in the context of

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[1] "Public goods charge" revenues are those collected by the electric and the gas utilities pursuant to Pub. Util. Code §§ 381 and 890 and which are used to fund EE programs in each of the utilities' service territories.)

community choice aggregation. The Commission has already ruled, in D.03-07-034, that its existing policies and procedures fulfill those portions of AB 117 that require the Commission to permit non-utilities to apply for program funding in the context of community choice aggregation territories. In addition, the Assigned Commissioner's Ruling on July 3, 2003 by establishing a process and policies by which all parties will be allowed to propose to become administrators, complied with the directive to the Commission in AB 117. This order does not, as suggested by some parties, eliminate or in any way limit the Commission's authority to determine the allocation of PGC funding, just as AB 117 does not preclude action by this Commission to establish a separate nongovernmental entity to administer EE funding. Nor does AB 117, require that non-utility entities be permitted to apply for the total amount of PGC energy efficiency funds without limitation.

This order seeks to maintain continuity and the stability of currently successful programs to enable the Commission and interested parties to focus on developing of an integrated energy efficiency policy framework, including integration of EE programs with procurement activities and settling the question of long-term administration, to create a stable platform that will ensure the long-term success of California's energy efficiency programs. In addition, stability and continuity is of great importance because any major shift from current practice in the short-term could disrupt our ability to carry out integrated resource planning.

II. Background

Pub. Util. Code §§ 381 and 890 direct the Commission to allocate about $275 million annually to EE programs. The allocation between collections for gas and electric is approximately $45 million for gas and $228 million for electric. The electric and gas utilities collect these revenues from customers for the purpose of funding EE programs.

The Commission has previously authorized funding for existing EE programs through the end of 2003 (Decision (D.) 03-04-055). The Commission also authorized funding for utility programs for a one-year period. It authorized a two-year funding cycle for third parties during 2002 and 2003.

The following table shows expected revenues by utility for 2004 and 2005:

Category	SDG&E	SoCalGas	SCE	PG&E	Total
2004 and 2005 EE PGC Collections	$75,000,000	$53,990,000	$180,000,000	$240,956,000	$549,946,000

On July 3, 2003 the assigned Commissioner issued a ruling (herein referred to as “the Assigned Commissioner’s Ruling” or “ACR”) in this proceeding soliciting the parties’ comments on a proposal for funding EE programs for the period 2004 and 2005, among other things. The ACR suggested funding programs for two-year intervals while the Commission is reviewing longer-term program administration. It proposed allowing the utilities to extend funding for existing programs for an additional two years and to permit third parties to extend existing local programs through June 2004. Further, the ACR proposed that the Commission consider a range of 15-20% of total Section 381 and 890 PGC funds for 2004 – 2005 to be reserved for third parties while the remainder would be used to fund utility programs. The ACR sought to retain existing criteria for selecting program proposals as adopted in D.01-11-066.

Many parties filed comments in response to the Assigned Commissioner Ruling: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) (jointly, Sempra), the California Energy Commission (CEC), The Utility Reform Network (TURN), SESCO, Women's Energy Matters (WEM), the County of Los Angeles (LA), University of California and California State University (UC/CSU), the Geothermal Heat Pump Consortium (GHPC), Energy Solutions, Efficiency Partnership, California State University/Fresno (CSUF), San Diego Regional Energy Office (SDREO), the National Association of Energy Service Companies (NAESCO), American Synergy Corporation, the City and County of San Francisco (San Francisco), Natural Resources Defense Council (NRDC), Quality Conservation Services (QCS), Proctor Engineering (Proctor), Sisson and Associates (Sisson) Steven Schiller and Douglas Mahone (Schiller & Mahone), Utility Consumers' Action Network, Rita Norton and Associates, Runyen Saltzman and Reinhom, Inc., California Urban Water Conservation Council (CUWCC), The California Building Performance Contractors' Association, Berilacqua-Knight, Inc., and Geopraxis, Inc., and Local Power.

This order addresses each issue raised by the ruling and solicits proposals for EE program funding for 2004-05.

III. 2004-2005 Programs

As context for our discussion below, we affirm the July 3 ACR that the Commission should continue to pursue EE programs aggressively in order to reduce California's energy consumption and to make EE an essential part of the state's energy program. These objectives are also reflected in the California Energy Action Plan adopted by the Commission, the California Energy Commission (CEC) and the California Consumer Power and Conservation Financing Authority. In order to accomplish them, we set our sights on programs that most effectively use the limited budget available for EE programs.

This decision is one in a series of steps toward assuring the Commission is most effectively promoting EE programs and the benefits that accompany them. To that end, this decision refines the process for awarding funding to various types of entities to implement 2004-05 EE programs funded by the "Public Goods Charge" on customer bills. We intend to review future solicitation criteria, practices and policies in the context of a broader examination of our EE programs.

A. Program Funding Cycle

The July 3 ACR proposed authorizing program funding for a two-year cycle for all entities to promote program stability and continuity while the Commission considers future program administration and other long-term issues.

The parties generally express support for a two-year funding cycle. Some would support program funding for a 3-5 year period. Proctor Engineering supports multi-year funding but observes that some firms who might provide innovative programs may not survive a two year period without any funding should their initial proposals be rejected.

We state our commitment to funding programs for two years for the period 2004-05 in order to ensure program continuity and stability. We intend to consider longer-term funding cycles in the near future as part of a more comprehensive review of EE program policies and practices.

B. 2004-2005 PGC Funding Allocation

The Commission allocated approximately 20% of PGC funds for EE programs managed by non-utilities during 2002-2003. The July 3 ACR proposed that the Commission consider a ranged of 15-20% of PGC funds for non-utility programs in 2004-2005, assuming the Commission receives adequate proposals for cost-effective programs. In addition, the ACR also proposed that the utilities partner with local governments and non-utilities to develop cost-effective and creative EE programs.

Some parties commented on how the Commission should allocate 2004-2005 PGC funds, raising concerns mainly about the allocation of funding between types of entities. Energy Solutions supports increasing non-utility PGC funding to as much as 35%, observing that the total funds available for EE efforts will increase if the Commission permits the utilities to include EE programs in their procurement portfolios. Energy Solutions observes that including EE program activities as part of the procurement portfolio means the utilities' total funding may not be reduced, even if future funding from the PGC is lower. Proctor Engineering would reduce utility funding to 60% in 2004 and 40% in 2005. SDREO opposes reductions in non-utility funding in favor of government entities "partnering" with utilities. It expresses frustrations with its past efforts to work with the utilities on EE program delivery.

TURN, Local Power, SESCO and WEM object to limiting non-utility funding in any way, suggesting such limits conflict with AB 117, which these parties believe permits third parties to apply for EE program funding without any limits. SESCO observes that single contractors have implemented utility-sponsored statewide programs and should be permitted to apply for funds independently in the future. WEM suggests the Commission conduct a "blind" program proposal review process to avoid any favoritism in the selection process. Local Power raises concerns that Community Choice Aggregators (CCAs) must be recognized as program administrators.[2]

NRDC, along with the utilities, supported the ACR's proposed structure for the 2004-2005 programs. Specifically, NRDC noted that adopting a structure dramatically different from the current one would divert resources away from the discussion on major long-term policy issues in this proceeding.

Schiller & Mahone argue that deciding how to allocate the funds among implementers before determining an overall strategy seems clearly to be putting the cart before the horse. The CEC proposes that the Commission abandon its practice of selecting EE programs and instead permit the utilities to select programs and manage them, whether or not the Commission sets aside specific allocations for third parties. The CEC suggests there may be friction and wasted funds in the current set of arrangements.

Discussion. Our objective in this proceeding is to maximize energy savings with cost-effective programs and consider the other public policy criteria we adopt today. The method by which the Commission considers funding allocation for EE programs is inextricably linked to the Commission's existing rules and objectives when the Commission

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[2] CCAs are organizations created by local governments pursuant to AB 117 for the purpose of procuring power and administering EE programs on behalf of local citizens. We recently addressed certain issues relating to AB 117's

considers the length of funding, the types of programs to fund, integrated resource planning and the appropriate administrators. Indeed, the Commission recognized the importance of allowing non-utilities access to PGC funds in D.03-07-034 when it found that,

> "The Commission's existing policies and procedures for selecting EE programs and administrators generally fulfill those portions of AB 117 that require the Commission to permit non-utilities to apply for program funding and that articulate policy criteria for selecting programs to be funded with revenues collected pursuant to Section 381."[3]

In their comments, TURN, SESCO, Local Power and WEM object to the limiting of non-utility funding in any way, based in part on the fact that such limitations would conflict with AB 117. In fact, TURN in its comments states that non-utilities should have access to PGC funds without limitation. SESCO and agreed parties agreed with TURN in its reply comments. In essence, these parties propose that the Commission should allow any party to apply for all of the PGC funds the utilities collect pursuant to Pub. Util. Code § 381.

We cannot agree with this reading of AB 117. AB 117 provides in relevant part:

> (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381.

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requirement that CCAs be provided opportunities to apply for EE program funding. (See D.03-07-034.)

[3] Finding of Fact #2, D.03.07.034

> In determining whether to approve an application to become administrators, the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:
>
> (1) Is consistent with the goals of the existing programs established pursuant to Section 381.
>
> (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.
>
> (3) Accommodates the need for broader statewide or regional programs.

Pub. Util. Code § 381.1(a). There is nothing in this section that would eliminate or in any way limit the Commission's authority to determine the allocation of PGC funding, just as AB 117 does not preclude action by this Commission to establish a separate nongovernmental entity to administer EE funding. Nor does anything in this section require that non-utility entities be permitted to apply for the total amount of PGC energy efficiency funds without limitation. Although this section permits any party to apply to be an administrator, nothing in the section requires all applicants to have equal access to all EE funds. Moreover, this provision vests in the Commission considerable discretion in determining who may become an administrator, requiring the Commission to consider, *inter alia*, consistency with existing programs, the public interest, and "the value of program continuity and planning certainty and the value of competitive opportunities for potentially new administrators."

In short, the Commission clearly retains its authority to determine the most effective structure for administrators of the PGC energy efficiency program funds, whether that administrator is the Commission, the utilities or some other entity established by this Commission in a future decision. In order to ensure that California ratepayers benefit from continued operation of EE programs in 2004-2005, and to allow competitive opportunities for all parties, we will consider using our funding levels of 80% of PGC funding allocated to statewide utility programs, and 20% of PGC funding allocated to non-utility programs without these being absolute limits. We have expressed a preference in previous decisions for greater flexibility to approve well-designed and cost-effective non-utility (including local government) programs. Therefore, the exact allocation will depend on our final evaluation of the program proposals given the criteria we have established, the extent to which non-utilities or local governments partner with utilities and our assessment of overall EE portfolio needs. Thus, our final allocation may allocate more than 20% of the funds for non-utility programs.

This decision recognizes that we are we are operating on a compressed timeframe to meet the goal of approving EE programs by the end of the year. In this circumstance, we find – consistent with the factors the statute requires us to consider – that program continuity and planning certainty would be best served by continuing the current balance between investor owned utility (IOU) and non-utility programs for the 2004-2005 solicitation. In addition, as stated in the July 3rd ACR, the

> "Goal is for the Commission to issue an order by the end of the year outlining a new energy efficiency framework,

> articulating goals, setting policy priorities, updating the Policy Manual, authorizing programs for 2004 and 2005, and adopting an evaluation plan."[4]

Below is an exemplary allocation of funds between entities and programs.

Category	SDG&E	SoCalGas	SCE	PG&E	Total	Percent
2004 and 2005 EE PGC Collections	$75,000,000	$53,990,000	$180,000,000	$240,956,000	$549,946,000	100%
Utility Programs	$52,500,000	$37,793,000	$126,000,000	$168,669,000	$384,962,200	70%
Statewide Marketing and Outreach	$4,500,000	$3,239,400	$10,800,000	$14,457,360	$32,996,760	6%
Non-utility Programs	$15,000,000	$10,798,000	$36,000,000	$48,191,200	$109,989,200	20%
Evaluation, Measurement and Verification	$3,000,000	$2,159,600	$7,200,000	$9,638,240	$21,997,840	4%

As we learn from the experiences of non-utility programs, we will have data and information available to more accurately assess the value of competitive opportunities for funding. Moreover, we do not feel it is prudent to radically change our policies and procedures from the 2003 solicitation as any major disruption could halt the substantial progress we have made so far. Responding to CEC's suggestion that the Commission permit the utilities to select non-utility EE programs, we intend to address options for EE administrative structures by April 2004. However, consistent with D.03-07-034, and our statutory requirement to balance program continuity with competitive opportunities, we will use the existing processes adopted for solicitation of IOU and non-utility programs.

Furthermore, we affirm our position in the July 3 ACR that we strongly encourage proposals from municipalities and local governments

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[4] July 3rd ACR at p. 12

that would seek to partner with the utilities. Local governments and municipalities are potentially a vital source of energy savings and we hold high expectations that the utilities will partner with them in order to foster cost-effective energy efficiency programs along with the other program goals stated herein. It is imperative that these projects be integrated with utility local and statewide programs. We will hold the utilities responsible for ensuring that municipalities and programs created by local governments are given high priority when it comes to partnering, within the context of the stated public policy goals and program evaluation criteria. If a utility partners with a municipality or local government, then whether the funding is supported from the utility allocation or the non-utility allocation will be decided on the specific program proposal submitted. We will not make an upfront determination of where the funding will come from, but rather on a case-by-case basis.

The allocation of funding for all proposed programs will depend on how well proposals meet adopted evaluation criteria, which we discuss in the following section. D.03-07-034 already addressed the concerns of WEM and Local Power that CCAs should be granted program funding without having to compete for that funding with other entities. In D.03-07-034, we addressed the threshold question of whether CCAs should be treated differently from other parties in the process of allocating EE program funds. We affirm here that CCAs should be permitted to apply for EE program funds as any other party and, for the time being, should not be granted preferences.

We concur with Schiller & Mahone that we should continue to match programs to objectives and administrative structures and to periodically refine our strategic approach to EE program development on the basis of changing circumstances. We believe, however, that this effort requires more time and effort than is available for the 2004-05 funding cycle. We intend to conduct the type of program review Schiller and Mahone suggest, as the July 3 ACR suggests.

C. Types of Programs

For each program cycle, the Commission may adopt a different mix of programs depending on the types of programs proposed, how programs meet adopted criteria, and the potential for energy savings in relevant markets. In the past, the Commission approved funding for activities that fall into the following categories:

1. Statewide programs
2. Local programs
3. Statewide marketing and outreach
4. Market assessment and evaluation activities.

More detailed program descriptions are included in Attachment 1.

The July 3 ACR suggested that all parties be able to apply for all types of programs except market assessment and evaluation activities.

No party objected to the Commission's funding any particular type of program. SCE objected to the suggestion that non-utilities may compete for funding for statewide programs, which the Commission has previously prohibited. The CEC suggested setting aside 10-20% of the amount allocated to evaluation measurement and verification (EM&V) for independent evaluation.

Consistent with our previous discussion, our primary objective in this proceeding is to promote cost-effective EE savings fairly and sensibly.

In pursuit of that objective, we do not wish to limit a party's ability to propose a program. To do so means we eliminate from consideration potentially cost-effective programs and effective entities. To assure the state receives the benefit of the best and most cost-effective package of EE programs, we will permit any party to propose any type of EE program for funding.

We will consider increasing the EM&V funding level if we determine that additional funds are required for meaningful EM&V reports. As in the last round, we expect non-utilities to include in their proposals budgets, activities, and criteria for EM&V. The evaluation budgets included separately in this decision are earmarked for evaluation of utility statewide programs. As discussed more fully in Section F, we will leave the bulk of the evaluation of these utility programs to the utilities, subject to oversight from this Commission. The Commission will also separately hire an independent entity to oversee and consolidate all evaluation efforts. The Commission may decide to transfer the responsibilities in the future of EM&V away from the utilities and to the Commission or an independent entity. The Commission makes no determination on this issue at this time**,** but leaves it to the consideration of the long-term administrative structure of the EE programs and an integrated EE policy framework.

D. Extending Utility Programs

The July 3 assigned Commissioner ruling sought the parties' comments on whether the utilities should be permitted to extend current statewide and local programs for an additional two years through the end of 2005. The ruling suggested any requests for extensions would need to be supported with evidence that the programs are successful and still in demand by customers. It proposed the utilities modify programs to improve cost-effectiveness, administrative efficiency, or fulfill other program criteria.

TURN objects to any automatic extensions on the basis that they would provide preference to the utilities at the expense of non-utility program funding. Proctor Engineering raises similar concerns. The utilities and Schiller & Mahone generally support this change in procedure, observing that it will promote program stability and continuity. SCE proposes that this extension obviates the need for any program solicitation. We concur with the ACR that the utilities should be permitted to propose extensions to their program offerings for an additional two years. On the basis of our review of AB 117, however, these extensions could not be automatic because we must ensure that all programs advance the public interest in maximizing cost-effective electricity and natural gas savings and related benefits and are consistent with the goals of existing programs established pursuant to Sections 381, 381.1, and 890. In their proposed extensions, the utilities should demonstrate that these programs are successful and the programs are still in demand by customers. The utilities may propose modifications designed to improve cost-effectiveness, administrative efficiency, or fulfill other program criteria. We will evaluate utility filings for program extensions based on the information provided to the Commission.

E. Criteria and Policy Rules for 2004-2005 Program Selection

The Commission has evaluated recent program proposals from all parties using the program selection criteria adopted in D.01-11-066. That order articulated the objectives of the Commission's EE programs and adopted criteria for evaluating EE program proposals, as follows:

1. Long-Term Annual Energy (Gas and Electric) Savings;
2. Cost Effectiveness;
3. Addressing Market Failures or Barriers;
4. Equity Considerations;
5. Peak Demand Savings;
6. Innovation, and;
7. Synergies and Coordination with Programs Run by Other Entities.

The July 3 ACR solicited the parties' views on whether and how the Commission should modify these evaluation criteria.

Several parties commented on the relevance of existing criteria. PG&E proposes to remove the criteria that refer to innovation, synergies with other programs, and market failures. It proposes that each program meet at least one of the four remaining criteria and that program portfolios meet all four in a more or less balanced way. PG&E also proposes the Commission eliminate the point system in the Policy Manual as "subjective." SCE would also reduce the list of evaluation criteria.

Sempra would add creditworthiness and program experience to this list. SDREO would add criteria that recognize customer preferences. San Francisco would add "environmental justice" to the list of criteria to recognize that minority and low-income customers living next to power plants are disproportionately affected by pollution. It also suggests the Commission consider the benefits of reducing regional peak demand, which may differ from statewide effects.

SESCO makes several suggestions for changing the criteria by which the Commission evaluates proposals. It advocates that preference be given to cost-effectiveness, not energy savings in isolation, since consideration of energy savings alone creates a bias in favor of large projects that are not necessarily most cost-effective. NAESCO and Sisson also advocate for increased emphasis on program cost-effectiveness. NAESCO proposes the Commission recognize various types of benefits that occur from EE programs and that cost-effectiveness may differ according to geographic area. It also emphasizes the need for those who implement programs to coordinate their efforts in ways that permit customers to see a whole package of EE options, rather than a set of disparate program offerings.

The CEC, among others, suggests that reducing peak demand is a more important policy objective than the current ranking suggests, considering that it improves system stability and reduces the need for new capacity. The CEC also suggests the Commission's evaluation criteria recognize the need for programs to be consistent with resource needs identified in the utilities' procurement proceeding, R.01-10-024.

Discussion. We retain most of the program criteria adopted in D.01-11-066, while making some modifications that reflect changes in markets and build on our recent experience. We adopt the following criteria in order of importance, as follows:

1. Cost Effectiveness
2. Long-term Annual Energy Savings
3. Peak Demand Savings
4. Equity
5. Ability to Overcome Market Barriers
6. Innovation
7. Coordination with Programs Run by other Entities
8. Demonstrated Success Implementing EE Programs

We agree with the parties who raised concerns about characterizing total energy savings as the most important criteria because it suggests we are more concerned with the size of an individual program rather than its effectiveness. Maximizing long-term energy savings remains one of our primary goals, but we agree that overall cost-effectiveness should be elevated in importance. The benefit-cost ratio of a program, defined as the program benefits divided by the program costs, will capture the effectiveness of a program irrespective of the program's size. At the same time the program's net benefits, defined as the program benefits minus the program costs, will capture the magnitude of the program's benefits and long-term energy savings. However, because of discounting, cost-effectiveness alone would tend to favor programs with greater short-term than long-term benefits. In addition, retaining long-term energy savings as a separate criterion helps us balance our portfolio between baseload energy savings and peak demand savings. Removing long-term energy savings as a separate criterion, while leaving cost-effectiveness and peak demand savings, would tend to bias the portfolio in favor of a total short-term, peak demand focus, to the detriment of programs that take longer to realize savings but are ultimately more sustainable and permanent. Thus, we simply reorder these three criteria and weight them differently from the last round.

We agree with CEC and others who suggest that reducing peak demand should be among the most important selection criteria. Reducing peak demand improves system reliability and permits the state to forego expensive capital investments in new power for on-peak demand. We rank the evaluation criteria accordingly. We will give additional weight to proposals that would reduce peak demand in geographic areas that are transmission-constrained or otherwise face reliability problems that have been identified by the California Independent System Operator (ISO) in its most recent system assessment report, generally published in the Spring and Fall.

As CEC suggests, we also intend to provide a preference for programs that would address resource needs the Commission has identified, whether as part of the procurement review or other process. We do not include this as a criteria but intend to select proposals that would address identified resource needs in cases where competing proposals are otherwise comparable from the standpoint of satisfying other criteria, such as cost-effectiveness or equity.

We continue to encourage parties to propose creative and innovative programs. We also agree with parties who suggest that success in delivering EE programs should be added to the list of program selection criteria. In this context, we expect parties to be able to show that their past programs have been cost-effective (for those measured that way) and have reached targeted communities. We agree with San Francisco's proposals, recognizing that environmental quality is among the essential benefits of EE programs. Equity in the distribution of selected EE programs will inherently ensure environmental equity as EE provides environmental benefits to the communities it serves. The Commission will continue to explicitly endorse equity in the distribution of EE funds.

Information and statewide marketing and outreach programs should be evaluated using criteria most relevant to these programs. Accordingly, we do not require an explicit showing of cost-effectiveness or a demonstration that programs will reduce peak demand. To the extent proposals can demonstrate these kinds of benefits, however, we will credit the proposal accordingly.

We also decline to adopt Sempra's proposal to add creditworthiness to the criteria list. In our view, Sempra has failed to establish that an entity's creditworthiness is tied to that entity's ability to provide cost-effective EE programs.

We do not adopt PG&E's suggestion that we reduce the evaluation criteria and judge proposals on the basis of a portfolio of program proposals. Many who propose programs may not present a portfolio of programs and our goal is to choose programs that maximize cost-effective energy savings rather than reduce accountability for individual program elements. PG&E and SCE may propose a reduced list of criteria for their EE programs that are incorporated in their procurement portfolios.

We also decline to eliminate the point system, which PG&E believes is subjective. While the point system may not be precise, no party has proposed an improvement to the existing rating system.

Staff will review proposals and recommend the design of the portfolio as follows: (1) Staff will evaluate each qualifying proposal using the primary and secondary criteria set forth below; (2) The proposals will be ranked in order of their scores on the primary criteria to create a short list of highest ranking proposals; (3) The proposals in this short list will then be ranked based on their combined primary and secondary criteria scores; (4) Finally, a portfolio of programs will be assembled from this smaller pool of proposals. Staff will go through the ranked list of proposals from top to bottom and will consider each proposal's fit into the portfolio. The portfolio must adhere to available funding by utility territory and have a total resources cost (TRC) ratio greater than one, and we ask staff to compile a balanced portfolio of programs that balances the following goals:

- Maximized energy savings
- Strong cost effectiveness
- Equitable geographic distribution
- Diversity of target markets
- Equity by rate class
- Equity between gas and electric program offerings and energy savings
- Diversity of program offerings
- Multiple languages offered to program participants

Staff's recommendation for the portfolio design will be provided to the Commission, which will make the final determination regarding which proposals will qualify for funding in the 2004 and 2005 program years.

Primary Criteria

We adopt the following points for each selection criteria according to the type of program as follows:

<u>PGC "Hardware" and Incentive Programs</u>

- Cost-Effectiveness (40 points: 30 points program net benefits, 10 points program benefit-cost ratio);
- Long-term Annual Energy Savings (20 points);
- Peak Demand Reductions (15 points);
- Equity (10 points);
- Ability to overcome market failures (5 points);
- Innovation (5 points);
- Coordination with Other Entities (5 points);

<u>Information-Only and Statewide Marketing and Outreach Programs</u>

- Ability to overcome market failures (25 points);
- Equity (25 points);
- Innovation (25 points);
- Coordination with other Program Implementers (25 points); and,

<u>Secondary Criteria</u>

- Quality and viability of program design (30 points);
- Distribution and reasonableness of budget (20 points);
- Program objectives and tasks clearly identified (20 points);
- Experience with successful delivery of similar programs (20 points);
- Alleviates transmission constraints in an area identified by the California ISO (10 points).

Although not a selection criteria, in order to execute the contract, parties who implement EE programs must demonstrate that they will comply with all local, state, and federal laws, and that they have or will obtain all necessary licenses.

E. Marketing and Outreach Programs

The assigned Commissioner ruling solicited the parties' views on whether the Commission should allocate about $15 million per year to Marketing and Outreach (M&O) programs. It suggested permitting any party to propose statewide M&O programs for 2004-05.

Efficiency Partnership proposes the Commission retain the current level of spending for M&O programs, about $20 million. It also suggests program criteria that promote coordination between those managing programs and those conducting M&O programs to promote the effectiveness of both types of programs and avoid duplication of efforts. In particular, Efficiency Partnership observes that a single website could provide information about or links to all PGC programs.

We concur with Efficiency Partnership that all parties implementing programs should demonstrate that they will coordinate their efforts with parties implementing M&O programs, and will include that requirement as an element of narrative program descriptions.

F. Market Assessment and Evaluation

The July 3 assigned Commissioner ruling solicited suggestions for market assessment and evaluation activities for 2004-2005 programs. It also suggested the Commission consider reestablishing the evaluation, measurement and verification protocols used by the Commission prior to l996.

PG&E proposes consistent evaluation criteria for all parties. Proctor Engineering and Cal-UCONS support the use of previous EM&V protocols as long as they are applied equally to all parties. They also suggest the findings of these investigations should be applied in the first program year. The CEC suggests the Commission contract for EM&V activities, observing that entities with program funding have incentives to influence evaluations of their own programs and may be able to assert that influence if they are managing evaluation contractors.

We will continue to refine the EM&V protocols by way of workshops and through the existing Commission mandated EM&V framework study with TecMRKT Works, overseen by SCE. Until the parties have had an opportunity to work with Commission staff on this issue, we will continue to use the existing EE Policy Manual to provide guidance for 2004-2005 EE program submissions. While we are in the process of revising and updating the EM&V protocols and framework, we will leave the bulk of the evaluation responsibility with the utilities, subject to oversight from this Commission. We will consider the larger issues related to who should evaluate EE program progress in the context of our deliberations later this year and in early 2004 on the overall structure of administration of EE programs.

G. Contracts and Program Administration

Some parties raised concerns about program administration and the nature of contracts between the utilities and third parties, which govern non-utility activities and payments. Energy Solutions recommends the contracts apply standard industry terms for time and materials rather than cost-plus terms, suggesting industry standards would promote more cost-effective use of funds. Schiller and Mahone oppose many aspects of the existing policy manual where they concern program administration, and suggest completely revising the manual to clarify and simplify the process. WEM raises several concerns about contract language, the contracting process and schedules for administration.

We will update the Policy Manual to make it consistent with the criteria and other requirements laid out by this Decision. We have taken comments on the standard contract required during the 2002 and 2003 program years. Based on those comments and our experience over the past 2 years, staff have revised the standard contract and will be posting the new contract on our EE website along with the revised Policy Manual. For those items that do not need to be resolved for the current program solicitation, we will conduct workshops to better understand the parties' concerns modify the Policy Manual in a future Commission decision.

H. Extending Non-utility Programs

The ACR proposed that third parties implementing EE programs be able to propose extending those programs through the second quarter of 2004 using currently approved funding levels. Program implementers would be allowed to commit all funds to specific purposes no later than March 31, 2004, and have until June 1, 2004 to complete all program activities, including final installations, evaluation, measurement and verification, and final reports. Final reports and evaluations for extended programs would be due no later than July 1, 2004.

LA does not oppose this change but asks that parties be permitted to submit related proposals no later than November rather than by

September. We will not make that change in the schedule, but will provide a process for program implementers that need more time to prepare their request.

Requests for program extensions are due by September 23, 2003. M&O program implementers, in addition to non-utility program implementers, are eligible to request no-cost extensions. Those program implementers who are unable to comply with the September 23rd deadline must obtain approval from the Executive Director for an exception prior to the deadline. In seeking approval for an exception to the deadline, implementers should provide an explanation for their anticipated delay. We also delegate authority to the Executive Director to approve these extensions since they do not require authorization of new funds or program elements, but simply extend program offerings for an additional time period.

We will permit non-utilities to seek program extensions for existing programs through the second quarter of 2004. These requests for extensions of time should explain the reasons for program delays and should not seek additional funding. These extensions will not affect funding for or administration of 2004-05 programs. Because these extensions do not require new funding or program elements, the Executive Director will have discretion to approve or deny the extensions on behalf of the Commission.

Separate from program extensions for existing programs, Efficiency Partnership believes it should be directed to file a justification for extension on September 22, 2003 similar to the process proposed for utilities rather than requiring another competitive solicitation process. It reasons that the ACR proposes that the utilities file justifications to extend their current statewide and local programs for two additional years, yet it requires the statewide marketing and outreach programs to competitively bid for funding over the next two years. Efficiency Partnership furthers states that this approach will disrupt the progress that the Efficiency Partnership has made in creating a statewide umbrella for the marketing and outreach efforts related to program diversity. SCE supports this program and contract extension for Efficiency Partnership.

We will grant the request of Efficiency Partnership that it should be permitted to file for an extension of its statewide marketing and outreach programs into the 2004-2005 time period. We intend to extend the funding for its statewide marketing and outreach programs upon a justification that the programs have been successful in light of stated criteria. We grant this exception for Efficiency Partnership because, unlike non-utility local programs, Efficiency Partnership's programs are designed to support the statewide utility programs. Our goal is to avoid disruption in statewide energy efficiency programs that have proven to be successful while at the same time, ensuring cost-effective programs, administrative efficiency and the fulfillment of other program criteria. Indeed, requiring statewide marketing and outreach programs to go through the solicitation process could potentially undermine the momentum and public awareness of statewide programs due to the time-sensitivity and distinct strategies of these programs. As the Efficiency Partnership states, "The Flex Your Power" campaign, for example, is planning a stakeholder workshop this Fall which will be attended by the utilities, municipal utilities, water agencies, manufacturers and retailers and appropriate third party providers to review enhancements to the efforts currently underway and finalize planning for 2004-2005. This type of forum may be vital to planning for the 2004-05 period and would need to be conducted in advance in order for related activities to be most effective. A potential disruption in this statewide program could effect the participation in this forum, as the stakeholders require some level of assurance and consistency in order to provide the resources necessary to ensure this program's effectiveness and statewide participation. Efficiency Partnership must file for an extension by September 8 in order for review of its proposal to be complete prior to filings by other parties. In addition, all other currently funded statewide marketing and outreach programs may also file a justification for extension as we instructed Efficiency Partnership.

I. Program Review Process and Schedule

Information about the process for applying for 2004-2005 EE program funding will be posted at the Commission's website. All parties must submit complete proposals, in accordance with the instructions posted on the Commission's EE web page, no later than September 23, 2003. Parties should assume the total budget for EE programs will be those funds collected pursuant to Section 381 from electric utilities and Section 890 from gas utilities. Utilities' proposals should specify how they would allocate additional procurement funds approved in R.01-10-024.

The parties generally advocate for an order by the end of the year that finalizes funding for programs. The Commission intends to authorize EE programs selected for funding in an order to be issued in December

2003, recognizing the need for program continuity and time for parties to plan their procurement and delivery strategies.

IV. Comments on Draft Decision

The Commission issued a draft decision on August 1, 2003. Parties stipulated to a reduction of the § 311(g) public review and comment period, and filed comments on August 12, 2003 and filed reply comments on August 18, 2003.

V. Procedural Matters

This proceeding is assigned to Commissioner Susan P. Kennedy and Administrative Law Judge Kim Malcolm.

Findings of Fact

1. Granting EE program funding for a two-year cycle during 2004-05 will promote program continuity and stability.

2. Many third parties who receive EE program funding for 2002-2003 programs have not had adequate time to implement their programs because of initial delays in funding. Granting third parties an additional extension through June 2004 to implement their programs could compensate for the previous delay.

3. Pub. Util. Code §§ 381 and 890, and AB 117 articulate state policy to promote EE programs that are cost-effective.

Conclusions of Law

1. Public Utilities Code Section 381 grants the Commission authority to determine how the Public Goods Charge energy efficiency programs should be administered. Section 5 of Assembly Bill 117, which added Section 381.1 to the Public Utilities Code, provides guidance to the

Commission to develop the necessary policies and procedures for administering the Public Goods Charge energy efficiency.

2. Assembly Bill 117 did not diminish the Commission's discretion and ability to adopt overall policies and selection criteria including the determining of funding allocations.

3. The Commission has already ruled, in D.03-07-034, that its existing policies and procedures fulfill those portions of Assembly Bill 117 that require the Commission to permit non-utilities to apply for program funding.

4. The Executive Director should have authority to approve or deny program extensions through 2004 proposed by third parties implementing EE programs funded for 2002-03.

5. If the utilities and the currently funded statewide marketing and outreach program providers propose two-year extensions to existing EE programs, they should be required to demonstrate that those programs meet adopted evaluation criteria on the same basis as any other party proposing program funding for 2004-05.

6. In light of the language in AB 117 and Section 381 articulating the need for EE programs that are cost-effective, it is reasonable to accord significant weight to those programs proposals that demonstrate cost-effectiveness.

7. Parties should apply for EE program funding for 2004-05 according to the schedule and procedures set forth herein and posted at the Commission's EE Rulemaking website: http://www.cpuc.ca.gov/static/industry/electric/energy+efficiency/rulemaking.htm

INTERIM ORDER

IT IS ORDERED that:

1. The policies for applying for 2004-05 energy efficiency (EE) program funding are set forth herein. The Executive Director is hereby authorized to provide detailed information about applying for 2004-05 EE program funding on the Commission's website, consistent with the practices and policies set forth herein.

2. Non-utility parties wishing to apply for 2004-05 EE program funding must do so no later than September 23, 2003, and consistent with this order and the procedures provided at the Commission's website.

3. Utilities shall submit their program plans for 2004-05 EE program funding by September 23, 2003 consistent with this order.

4. Currently funded statewide marketing and outreach program providers shall submit their program plans for 2004-05 EE program funding by September 8, 2003 consistent with this order.

5. This decision adopts the 2004-05 program selection criteria as set forth herein.

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/ / /

6. The Commission hereby delegates authority to the Executive Director to grant or deny requests by parties implementing 2002-03 EE programs to extend the time to implement those programs to June 30, 2004, as set forth herein.

Dated August 21, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a dissent
/s/ LORETTA M. LYNCH
Commissioner

I reserve the right to file a concurrence
/s/ CARL W. WOOD
Commissioner

I will file a concurrence
/s/ SUSAN P. KENNEDY
Commissioner

ATTACHMENT 1

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DESCRIPTIONS OF PROGRAM TYPES FROM DECISION 01-11-066

Statewide Programs

Statewide programs are those that are uniform, with consistent terms and requirements, throughout all utilities' service territories. These consistent terms should include identical application procedures, financial incentives, and other program implementation details.

A. Statewide Residential Programs

(1) Statewide Residential Retrofit

This program category targets energy savings in existing single-family and multi-family residential homes. Programs may include a full range of services, such as information, outreach, training, audits, and direct incentives for energy-efficient technologies. Alternatively, they may include one or more of these service elements.

a) Downstream Appliance, Lighting & HVAC Rebates

This program would provide rebates for purchases of the following technologies, individually, or in any combination:

1. Energy Star furnaces
2. Energy Star central air-conditioners
3. Energy Star room air-conditioners
4. Energy Star Compact Fluorescent Lamps
5. Whole house fans
6. Energy Star clothes washers

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DESCRIPTIONS OF PROGRAM TYPES FROM DECISION 01-11-066

7. Energy Star dishwashers

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8. Energy Star windows
9. High efficiency hot water heaters.

(2) Comprehensive Residential Retrofits

This program includes installation of building shell EE measures, and other comprehensive treatments, including, but not limited to:

1. Insulation
2. Windows
3. Weather stripping
4. Duct sealing
5. Reflective roofing.

a) Appliance Retirement and Recycling

This program promotes refrigerator, freezer, and room air-conditioner recycling. Any appliance retirement program should offer comprehensive toxic material recycling and disposal in conformance with California environmental laws and regulations and permitting requirements.

(3) Statewide Residential New Construction

Proposals for new statewide residential new construction programs should set a benchmark above the current June 2001 Title 24 building code standards. Parties' proposals should incorporate the California Energy Commission's proposed code revisions in 2005. Because Title 24 standards exceed federal standards, the Energy Star Homes label itself may not be

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DESCRIPTIONS OF PROGRAM TYPES FROM DECISION 01-11-066

appropriate for a California residential new construction program, though the general approach may be. Parties should target a benchmark lower than Title 24 energy use levels.

B. Statewide Nonresidential Programs

(1) Statewide Nonresidential Retrofit

This program category promotes retrofits in all commercial building sectors. Programs may emphasize technical support, capacity-building, emerging technology demonstration, and quality assurance. Some examples of such programs are as follows.

a) Large and Medium Nonresidential Customized Program

Among the programs for large and medium nonresidential sectors are the Standard Performance Contract (SPC) program, customized rebates, and demand-side bidding programs. These programs offer incentives on the basis of verified energy savings, rather than by prescribing replacement of specific equipment.

b) Small Business Rebates

Customer rebates could be offered for the following technologies or others:

1. T8 and/or T5 lamps
2. Electronic ballasts
3. Lighting controls such as photocell controllers and occupancy sensors

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4. Compact Fluorescent Lamps (CFLs)
5. High-efficiency motors,
6. Heating, Ventilation, and Air conditioning (HVAC) measures.

c) Building Operator Certification and Training

Building operator certification and training programs would educate operators of large and medium commercial buildings, including public buildings, on short- and long-term peak demand and energy savings strategies for their buildings. After participating in training activities, individual building operators could become certified in efficient building operation.

(2) Statewide Nonresidential New Construction

Statewide nonresidential new construction programs should set a new benchmark above the Title 24 building code in consultation with the California Energy Commission and should support CEC's proposed 2005 code revisions. This type of program emphasizes incentives to incorporate energy savings measures during the design process rather than specifying applicable technologies.

C. Statewide Cross-Cutting Programs

A cross-cutting program may target both residential and non-residential customers or may support other programs in either retrofit or

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new construction markets. The following are examples of the types of programs.

(1) Statewide Marketing and Outreach

Statewide marketing and outreach programs may include information campaigns capitalizing on the success of the state's *Flex Your Power* campaign and advertise statewide programs offered across utility service territories. In addition, such programs may include upstream marketing and outreach to manufacturers and retailers.

(2) Upstream Appliance, Lighting and HVAC Rebates

By coordinating with manufacturers and distributors, upstream programs ensure that high-efficiency technologies are available in stores for purchase by residential and business consumers. Programs could include the following technologies (or others):

1. Energy Star furnaces
2. Energy Star central air conditioners
3. Energy Star room air conditioners
4. Energy Star CFLs
5. Whole house fans
6. Energy Star clothes washers
7. Energy Star dishwashers
8. High efficiency hot water heaters, and

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9. Energy Star Windows.

2. Local Programs

Local programs may respond to local customer needs and take advantage of local relationships to increase participation.

A. Local Residential Programs

Proposals may offer comprehensive outreach, financing, technical support, contractor facilitation and outreach, as well as quality assurance.

B Local Nonresidential Programs

Local programs may building on local relationships and networks to reach nonresidential customers. They may emphasize technical support, outreach, contractor referral and oversight, bulk procurement, financing, and quality assurance. Eligible EE measures should include high-efficiency lighting, HVAC, and refrigeration.

They may also promote EE in the industrial and agricultural sectors of the state. Proposals should emphasize technical support, financing, education and training/capability-building, and strong measurement and verification plans.

C. Local Cross-Cutting Programs

Local cross-cutting programs may target multiple sectors and/or both retrofit applications and new construction.

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DESCRIPTIONS OF PROGRAM TYPES FROM DECISION 01-11-066

(1) Education/Training/Outreach

This program provides education, training and outreach in local communities. Such programs may build infrastructure and strengthen institutions in order to expand the capability for EE delivery. They may be targeted to community-based organizations.

(2) Building Codes and Standards Support

This program supports local efforts to inform and train builders, developers, building officials, and tradespersons on code and standards revisions.

(END OF ATTACHMENT 1)

R.01-08-028
D.03-08-067

Concurrence of Carl Wood Item #93, August 21, 2003
Energy Efficiency Funding

It is critical to the success of our energy efficiency efforts going forward to strike the proper balance between utility-run and third party-run programs. The opinion that we adopt, today, recognizes this concern and pledges a collective open mind in establishing that balance after reviewing the forthcoming program proposals. For this reason, I have voted to approve the order.

We should support utility programs that are sufficiently cost-effective and hold the promise of producing significant future savings. When programs are working, and continue to rise to the top when compared to other proposals, continuity becomes a significant goal – to take full advantage of start-up costs and lessons learned, and to provide needed job stability to those who implement the programs. Of course, the same can be said for programs offered by third parties. We should support successful non-utility programs, as well.

Utility energy efficiency programs can benefit from the close relationship between the company and its customers and support utility efforts to respond to demand in an integrated and cost-effective manner. Support for third-party programs brings the hope of encouraging innovation and tailoring programs to unique local conditions. There is no reason that a portfolio of well-chosen and effectively-managed third-party programs cannot provide predictable energy savings upon which the utilities can rely for planning purposes.

It is for all of these reasons that I look forward to considering the utility and non-utility proposals that will result from the current solicitation and trust that my colleagues will join me in maintaining an open mind when determining the appropriate mix of utility and non-utility programs justified by those proposals.

/s/ CARL WOOD
Carl Wood
Commissioner

San Francisco, California
August 21, 2003